

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JAMES C. WINDING

PLAINTIFF

VS.

CIVIL ACTION NO. 3:14cv576-FKB

J. BRUSHER, et al.

DEFENDANTS

OPINION AND ORDER

This action was brought pursuant to 42 U.S.C. § 1983 by James C. Winding, a state prisoner. Presently before the Court are the parties' cross motions for summary judgment. For the reasons stated herein, the Court concludes that Plaintiff's motions should be denied, Defendants' motion granted, and this matter dismissed.

On July 19, 2014, inmate Cervante Thomas assaulted Plaintiff with a lock in a sock. Thereafter, Plaintiff filed this action and a motion for emergency injunctive relief, alleging that Thomas was threatening to attack him again and was still housed in the same unit as Plaintiff. On August 18, 2014, a hearing was held for consideration of Plaintiff's motion to proceed *in forma pauperis* and other matters. After the hearing, the undersigned entered a report and recommendation recommending that some of Plaintiff's claims be dismissed. Subsequently, prior to the adoption of the report and recommendation by the district judge, the parties consented to jurisdiction by the undersigned. The reasons stated in the report and recommendation for dismissal of Plaintiff's claims for failure to protect him from the attack of July 19, 2014, and for denial of medical care are incorporated herein, and those claims are hereby dismissed.

Remaining is Plaintiff's claim that Defendants are not protecting him from a second attack by Thomas. At the August 18, 2014 hearing, the housing situation was discussed

with the parties in an attempt to effect a resolution. Subsequently, Defendants notified the Court that Thomas's custody classification had been changed and that he had been moved to a different unit.

In their motion for summary judgment, Defendants have provided evidence that Winding and Thomas remain housed in separate units. Plaintiff has offered no evidence to the contrary. Thus, Plaintiff's claim for injunctive relief to prevent a future attack is now moot. Furthermore, his own motion for summary judgment fails to provide any basis for relief.

Accordingly, Defendants' motion is granted, Plaintiff's motions are denied, and this matter is dismissed. A separate judgment will be entered.

So ordered and adjudged, this the 3rd day of February, 2015.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE